



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 138

David K. Martin
P. O. Box 10
The Tower Building
200 South Chestnut
Olathe, Kansas 66061

Re: Cities and Municipalities -- Municipal Courts;
 Appearance and Conditions of Release -- Appearance
 Bonds

 Kansas Constitution -- Corporations -- Municipal
 Home Rule Powers; Appearance Bonds

Synopsis: Where the holder of a valid Kansas driver's license
 is arrested for the violation of a city ordinance
 relating to the operation of a motor vehicle, the
 provisions of K.S.A. 12-4301(d) permit such per-
 son to deposit said license with the arresting
 officer or clerk of the municipal court to secure
 such person's appearance, irrespective of whether
 such person is a resident of the city in which he
 or she was arrested. Cited herein: K.S.A. 8-2107
 (as amended by L. 1983, ch. 42, §1), 12-4113,
 12-4301.

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Dear Mr. Martin:

As city attorney for the City of Mission, Kansas, you have asked whether a municipality can "require a Kansas resident whose residence is outside the city limits to post a driver's license as security for requiring . . . [such person's] appearance in Municipal Court on the violation of a municipal ordinance."

You note there seems to be "some confusion among municipal prosecutors" regarding this matter, and you have referenced

several sections of the Kansas Code of Procedure for Municipal Courts as having possible relevance to the issue you have posed. In addition, you have referenced K.S.A. 8-2107 (as amended by L. 1983, ch. 42, §1). Because of this latter reference, it is appropriate to note initially that it was concluded in Attorney General Opinion No. 83-137 (copy enclosed) that K.S.A. 8-2107 (as amended) applies only where a law enforcement officer has "halted" a person for the violation of a state traffic law, and it has no application to violations of city traffic ordinances. Hence, a response to your question must be derived primarily from provisions of the Code of Municipal Procedure.

Of particular relevance is K.S.A. 12-4301, which provides, in part, as follows:

"A person having the right to post bond for appearance shall, in order to do so, execute in writing a promise to appear at the municipal court at a stated time and place."

This statute then provides that the bond "shall be in an amount as determined by the municipal judge, and may be secured" in one of the ways listed in the statute. Three of the four methods listed are of general application to all alleged violations of city ordinances, but the fourth method has application only where a person is arrested for violation of an ordinance relating to the operation of a motor vehicle. This method is detailed in subsection (d) of the statute, which provides, in pertinent part:

"(d) In lieu of giving security in the manner provided by subsections (a), (b) and (c) above, if the arrest is for the violation of a city ordinance relating to the operation of a motor vehicle the accused person may deposit with the arresting law enforcement officer or clerk of the municipal court a valid license to operate a motor vehicle in the state of Kansas in exchange for a receipt therefor issued by the law enforcement officer or the clerk of the municipal court, the form of which shall be approved by the division of vehicles of the state department of revenue."
(Emphasis added.)

In light of your inquiry whether the municipality can "require" a driver's license to be deposited as security, it should be noted initially that the foregoing provisions are permissive. A person subject to the statute "may deposit" such person's license to operate a motor vehicle in Kansas in lieu of securing his or her appearance by one of the

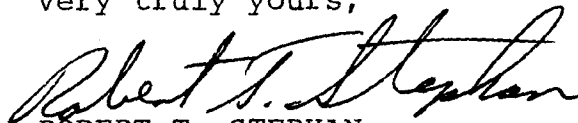
other methods prescribed in subsections (a), (b) and (c). This conclusion is consistent with a prior opinion of this office, Attorney General Opinion No. 78-331.

It also is appropriate to express our concurrence with Attorney General Opinion No. 77-104, which concluded that K.S.A. 12-4301 does not authorize a municipal court to accept a driver's license issued by any state other than Kansas.

Finally, we note that the above-quoted provisions apply to an "accused person." This term is defined in K.S.A. 12-4113(b), for purposes of the Code, as meaning "a person, corporation or other legal entity accused by a complaint of the violation of a city ordinance." Nothing in that definition limits its scope to persons or entities residing within a city's corporate limits. Moreover, we find nothing in K.S.A. 12-4301(d) which would so limit its application. Accordingly, we believe that, in permitting an "accused person" to deposit a valid license to operate a motor vehicle in Kansas, as a means of securing such person's appearance in municipal court, K.S.A. 12-4301(d) has application to any person possessing a valid Kansas driver's license, irrespective of whether such person is a resident of the city in which he or she is arrested.

In summary, it is our opinion that, where the holder of a valid Kansas driver's license is arrested for the violation of a city ordinance relating to the operation of a motor vehicle, the provisions of K.S.A. 12-4301(d) permit such person to deposit said license with the arresting officer or clerk of the municipal court to secure such person's appearance, irrespective of whether such person is a resident of the city in which he or she was arrested.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle

Enc.